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U.S. Electric, Inc. and Local 58, International Brotherhood of Electrical Workers, AFL-CIO. Case 7-CA-45239

June 27, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint. Upon a charge filed by the Union on June 27, 2002, the General Counsel issued the complaint and amendment to complaint¹ on August 30 and September 9, 2002, respectively, against U.S. Electric, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the Act. The Respondent failed to file an answer.

On October 7, 2002, the General Counsel filed a Motion for Default Judgment with the Board. On October 9, 2002, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the General Counsel's motion disclose that the Region, by letter dated September 27, 2002, notified the Respondent that unless an answer were received by October 4, 2002, a Motion for Default Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

¹ The amendment to the complaint corrected a date in the complaint and added a subparagraph concerning jurisdictional information.

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Clinton Township, Michigan (the Clinton Township facility), has been engaged as a residential and commercial electrical contractor.

During the calendar year ending December 31, 2001, the Respondent, in conducting its business operations described above, derived gross revenues in excess of \$500,000, purchased goods and materials valued in excess of \$50,000 from points located outside the State of Michigan, and caused those goods and materials to be shipped directly to its Clinton Township facility and its Michigan jobsites. The Respondent also provided services valued in excess of \$50,000 for enterprises or entities directly engaged in interstate commerce. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of the Respondent within the meaning of Section 2(11) of the Act and agents of the Respondent within the meaning of Section 2(13) of the Act:

Mike Parziale	Principal Owner
Steve Ross	Principal Owner

The following employees of the Respondent (the unit), constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All journeymen electricians and apprentices employed by Respondent; but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

Since approximately 1999, the Union has been the exclusive collective-bargaining representative of the employees in the unit and since then has been recognized by the Respondent as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms from September 15, 2000, to September 14, 2004.

At all times since about 1999, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About January 29, 2002, the Respondent ceased all operations at, and closed, its Clinton Township facility.

The Respondent engaged in the conduct set forth above without prior adequate notice to the Union and without giving the Union an opportunity to bargain with the Respondent with respect to the effects of such conduct on the unit.

The subjects set forth above relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

Since about January 25, January 29, and March 13, 2002, by letter, the Union has requested that the Respondent furnish it with the following information regarding the Respondent's relationship with an entity called AMJ Electric Services, Inc.:²

1. Provide U.S. Electric's business address(es) and telephone number(s).
2. Provide AMJ's business address(es) and telephone number(s).
3. Describe U.S. Electric's business, service and products.
4. Describe AMJ's business, services and products.
5. List the names, titles and business addresses of all officers, directors, and shareholders of U.S. Electric, Inc. and specify the ownership percentage of each shareholder.
6. List the names, titles and business addresses of all officers, directors, and shareholders of AMJ and specify the ownership percentage of each shareholder.
7. Describe the relationships between U.S. Electric, Inc., and AMJ Electrical Services, Inc., and specify when the relationships began.
8. List the name(s), address(es), title(s), and telephone number(s) of the custodian(s) of U.S. Electric's corporate books and records.
9. List the name(s), address(es), title(s), and telephone number(s) of the custodian(s) of AMJ's corporate books and records.
10. List the name(s), business address(es), title(s), and telephone number(s) of U.S. Electric's

principal bookkeeper(s), payroll preparer(s), and accountant(s).

11. List the name(s), business address(es), title(s), and telephone number(s) of AMJ's principal bookkeeper(s), payroll preparer(s), and accountant(s).

12. Identify by name, job title(s), and employment dates each person who is, or has been employed by U.S. Electric, Inc., who also is or has been employed by AMJ Electrical Services, Inc.

13. Identify by name, job title(s), and dates of employment all superintendents, foremen and other managers and supervisors employed by U.S. Electric, Inc.

14. Identify by name, job title(s), and dates of employment all superintendents, foremen and other managers and supervisors employed by AMJ Electrical Services, Inc.

15. Provide a list of U. S. Electric, Inc. employees in the Local 58-represented bargaining unit for the past year, including each employee's job title(s) and employment dates and, if laid off or otherwise terminated, the reason for the layoff or termination.

16. Identify all jobs undertaken by U.S. Electric, Inc. during the period June 2000 to date, specifying for each the name, address and telephone number of each customer, general contractor, and subcontractor on the job, and the nature, scope and duration of the work performed.

17. Identify all jobs undertaken by AMJ Electrical Services, Inc. during the period June 2000 to date, specifying for each the name, address and telephone number of each customer, general contractor, and subcontractor on the job, and the nature, scope and duration of the work performed, including the number of work hours performed by hourly employees on the job, indicating the hourly rate for hours worked, and the wages and fringe benefits paid those benefits [sic].

18. Identify the dates, amounts, and reasons for any transfer of funds from U.S. Electric, Inc. to AMJ Electric Services, Inc. or from AMJ Electrical Services, Inc. to U.S. Electric, Inc.

19. Provide copies of all advertising and promotional material, including communications soliciting work, put out by U.S. Electric, Inc. or AMJ or both.

20. List all the equipment owned by U.S. Electric, Inc.

21. List all vehicles owned by U.S. Electric, Inc.

22. List all the equipment owned by AMJ Electrical Services, Inc.

² The Union's January 25, 2002 letter to the Respondent requesting this information stated: "We understand that U.S. Electric, Inc., is operating an entity called AMJ Electrical Services, Inc., or is operating under that name, performing work subject to the Inside Agreement by and between Southeastern Michigan Chapter, National Electrical Contractors Association, Inc., (NECA) and Local Union No. 58, International Brotherhood of Electrical Workers (IBEW). U.S. Electric, Inc. is a party to the NECA-IBEW Agreement, therefore, we request the following information."

23. List all vehicles owned by AMJ Electrical Services, Inc.

The information requested by the Union is necessary for and relevant to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit.

About January 29 and March 13, 2002, by letter, the Union requested that the Respondent bargain over the effects of the decision to cease doing business about January 29, 2002.

Since about January 25, 2002, the Respondent has failed and refused to furnish the Union with the information requested, and since January 29, 2002,³ has failed and refused to bargain with the Union over the effects of the decision to cease doing business.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, to remedy the Respondent's unlawful failure and refusal to bargain with the Union about the effects of the Respondent's decision to close its Clinton Township facility, we shall order the Respondent to bargain with the Union, on request, about the effects of its decision. As a result of the Respondent's unlawful conduct, however, the terminated employees have been denied an opportunity to bargain through their collective-bargaining representative. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

³ The complaint, at par.16, alleges that since about January 25, 2002, the Respondent has failed and refused to bargain with the Union over the effects of its decision to cease doing business. However, prior allegations in the complaint allege that it was on January 29, 2002, that the Respondent ceased operations at and closed its Clinton Township facility without advance notice to the Union and without affording the Union an opportunity to bargain over the effects of the decision to close. We therefore conclude that the actual date of the Respondent's refusal to bargain is January 29, 2002.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the purposes of the Act, to accompany our Order with a limited backpay requirement designed to make whole the employees for losses suffered as a result of the violations and to re-create in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the terminated employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).⁴

Thus, the Respondent shall pay its unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Further, having found that the Respondent has failed to provide the Union information that is relevant and necessary to its role as the exclusive collective-bargaining representative of the unit employees, we shall order the Respondent to furnish the Union with the information requested.

⁴ See also *Live Oaks Skilled Care & Manor*, 300 NLRB 1040 (1990).

Finally, in view of the fact that the Respondent's facility is currently closed, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former employees who were employed by the Respondent since January 25, 2002, in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, U.S. Electric, Inc., Clinton Township, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain in good faith with the Union, as the exclusive collective-bargaining representative of the employees in the unit set forth below, about the effects of its decision to close its Clinton Township, Michigan facility:

All journeymen electricians and apprentices employed by Respondent; but excluding office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) Failing and refusing to provide the Union with information that is necessary for and relevant to the Union's performance of its duties as the exclusive bargaining representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union over the effects on unit employees of its decision to close its Clinton Township, Michigan facility and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay the former unit employees their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of the closing of its facility on its employees; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operations, to the time they

secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than the employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ, with interest, as set forth in the remedy section of this decision.

(c) Provide the Union with the information it requested about January 25, January 29, and March 13, 2002, regarding the Respondent's relationship with an entity called AMJ Electrical Services, Inc.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"⁵ to all unit employees who were employed by the Respondent since January 25, 2002.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 27, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

⁵ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX
NOTICE TO EMPLOYEES
MAILED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board had found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the following unit, by failing and refusing to bargain about the effects of our decision to close our Clinton Township, Michigan facility:

All journeymen electricians and apprentices employed by us; but excluding office clerical employees, profes-

sional employees, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to provide the Union with information that is necessary for and relevant to the Union's performance of its duties as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union concerning the effects on unit employees of our decision to close our Clinton Township, Michigan facility, and reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay our unit employees limited backpay in connection with our failure to bargain over the effects of our decision to close our Clinton Township, Michigan facility, as required in the Decision and Order of the National Labor Relations Board.

WE WILL provide the Union with the information it requested on January 25, January 29, and March 13, 2002, regarding our relationship with an entity called AMJ Electrical Services, Inc.

U. S. ELECTRIC, INC.